U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Sierra Leone and holds a British Protected Person passport. Her country of citizenship is unclear from the record. She was admitted to the United States on June 9, 1989 as a visitor for pleasure. She is the beneficiary of an approved Petition for Alien Relative filed by her U. S. citizen mother. She was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to remain in the United States with her mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying relative. The district director also concluded that the applicant had failed to establish that she warranted a favorable exercise of the Attorney General's discretion and denied the application accordingly.

On appeal, counsel states the district director acknowledged the applicant's mother's disability due to chronic health conditions, and the fact that the applicant helps her mother monitor her health. Counsel asserts that the director incorrectly assumed that the applicant's U.S. citizen brothers could take care of her mother, and that the applicant does not appear to have time to take care of her mother. The record contains two doctors' letters regarding the applicant's mother's health problems, as well as two sworn statements by the applicant's mother.

The record reflects that the applicant was convicted of fraudulent use of an access card, in violation of the California Penal Code § 484g on March 17, 1997. On June 4, 1998, the applicant was convicted of petty theft, in violation of the California Penal Code § 666. The applicant was sentenced to a total of 20 days in the county jail, probation, fines, and restitution. Section 212(a)(i) of the Act states, in pertinent part:

> (A)(i) Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime,. . . is inadmissible.

Section 212(h) of the Act provides, in part, that: - The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if –

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that –
>
> > (i) the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status;

> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and;
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .
>
> (2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status . . . . No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act. The question remains whether the applicant qualifies for a waiver under section 212(h)(1)(B) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme". Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) refers to *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), where the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. The record contains evidence that the applicant's U.S. citizen mother would suffer extreme hardship if the applicant were removed from the United States.

The record contains two medical letters documenting the medical condition of the applicant's mother. The record reflects that the applicant's mother is 81 years old and appears to be unable to sign her name, indicating possible illiteracy, blindness, or some other physical impediment. In 2000, [redacted] wrote that the applicant's mother suffers from chronic arthritis, hypertension, and varicose veins, and that she is totally disabled and depends on her daughter for her daily activity and medications. [redacted] added that it is important that the applicant remain with her mother to care for her. In 2003 [redacted] wrote that the applicant's mother suffers from heart disease and degenerative arthritis, among other maladies. [redacted]

[redacted]ndicated that the applicant's mother requires close monitoring. He recommended that the applicant live with her mother to provide home support and medical monitoring.

In addition, the applicant's mother wrote that she is blind in one eye, has a cataract on the other eye, and is in constant pain. The applicant's mother stated that she is completely disabled and is physically dependent on her daughter, who bathes her, prepares her meals, monitors her medications, and takes care of her daily needs. The applicant's mother also stated that she prefers to live with her daughter rather than with her sons. On appeal, counsel points out that the applicant's mother's desire to receive personal and intimate care from a daughter rather than a son is not unreasonable. The AAO agrees. The applicant's mother noted that the applicant worked two jobs in order to provide for her mother. On appeal, counsel explains that the applicant works the evening and midnight shift, thus rendering her available to care for her mother during the day. The applicant's mother also stated that she depends on her daughter emotionally and financially, and she "trembles with fear and anxiety" at the thought of her daughter leaving her.

Based on the above factors, the applicant has established that her mother would suffer extreme hardship if she were removed from this country. The record does not specify to which country the applicant would be removed, although the AAO notes that the British Protected Person passport she holds does not necessarily indicate British citizenship. Nevertheless, given the age and frailty of the applicant's mother and her family ties in the United States, it is likely she would experience extreme hardship upon being uprooted to accompany the applicant, particularly if the country to which the applicant would be removed is that of her birth, Sierra Leone.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the Board held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra,* at 12.

The negative factors in this case consist of the following:

- The applicant entered the United States in 1989 as a nonimmigrant visitor and remained longer than authorized;
- The applicant engaged in unauthorized employment; and
- The applicant was convicted of two crimes involving moral turpitude in 1997 and 1998.

The positive factors in this case include:

- The applicant has strong family ties to the United States;
- The record establishes that the applicant's mother would suffer extreme hardship if the applicant were removed from the United States;
- The applicant completed her probation and paid her fines and restitution;
- Since 1998 the applicant has had no further arrests or convictions; and
- The applicant is gainfully employed.

Although the applicant's criminal past and unlawful presence in the United States cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.